DCCUMENT RESUME

02351 - [A1332311]

[Unequal Treatment During Conduct of a Benchmark Demonstration].
B-186164. May 9, 1977. 3 pp.

Decision re: Compu-Serv; by Paul G. Dembling (for Elmer B.
Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government
    (806).
Organization Concerned: Department of Health, Education, and
    Welfare; On-Line Systems; Tymshare, Inc.
Authority: 54 Comp. Gen. 468. B-186719 (1976).

        Company protested that all offerors were not treated
equally during the conduct of benchmark demonstrations outlined
by the agency. The protest was untimely because it was filed
more than 10 days after the grounds for the protest were known.
Although ar offeror with a benchmark deficiency was allowed to
submit a best and final offer, the facts were not prejudicial to
the protester since the award was made to a third offeror who
successfully passed the benchmark. (Author/SC)

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

J. Vickers

FILE: B-186164   DATE: May 9, 1977

MATTER OF: Compu-Serv

DIGEST:

1.   Although protest is filed within 10 days of agency debrief-
      ing, where grounds for protest were known more than a month
      prior to debriefing, protest filed more than 10 days after
      those grounds became known is untimely.

2.   While record indicates that offeror with benchmark deficiency
      was permitted to submit best and final offer and protester,
      whose benchmark was also deficient, was excluded from further
      negotiations, facts are not prejudicial to protester as award
      was made to third offeror who successfully passed benchmark.

     On November 18, 1975, the Department of Health, Education,
and Welfare (HEW) issued request for proposals (RFP) No. 25-75-
HEW-OS for computer services for an automated correspondence control
system.

     On the closing date for receipt of proposals, February 11,
1976, five proposals were received by HEW. Following an initial
evaluation in which all proposals were found technically acceptable,
the five offerors were subjected to a benchmark demonstration
outlined in the RFP. After evaluation of the data generated by
the benchmarks, award of the contract was made to On-Line Systems.

     This award has been protested to our Office by Compu-Serv
on the basis that all offerors were not treated equally during the
conduct of the benchmark.

     Before reaching the merits of the protest, since HEW has raised
the issue of the timeliness of Compu-Serv's protest, that issue
must be discussed.

     HEW's allegation that the protest is untimely is based on the
fact that following the notice of award to On-Line Systems, Compu-
Serv requested a debriefing by the contracting officer. By letter
of June 22, 1976, the contracting officer advised Compu-Serv of the
reasons why its proposal was not successful and that due to the work-
load in the office, an oral debriefing could not be scheduled. On

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July 9, 1976, Compu-Serv again requested an oral debriefing to discuss
the points raised in the June 22, 1976, letter. An oral debriefing
was held on July 29, 1976, and on August 11, 1976, Compu-Serv pro-
tested the award to our Office. Based on these facts, HEW concludes
that as Compu-Serv knew the reasons for its protest upon receipt of
the June 22, 1976, letter and since it did not protest to the con-
tracting officer within 5 working days thereof, as required by HEW
Procurement Regulations, the protest subsequently submitted to our
Office is untimely.

From our review of the record, it appears that Compu-Serv knew
of the bases of its protest, with the exception of one which will
be discussed infra, upon receipt of the June 22, 1976, letter.
Therefore, we find that portion of the protest based on information
contained in the June 22 letter to be untimely. We continue to
believe that a protester may withhold filing a protest with this
Office pending an imminent debriefing to learn why its proposal was
not favorably considered for award. See Lambda Corporation, 54 Comp.
Gen. 468 (1974), 74-2 CPD 312. However, where a would-be protester
is sufficiently apprised of a basis for protest prior to such a
debriefing, it would be inappropriate to permit more than a modest
delay in filing the protest pending the debriefing. Power Conversion,
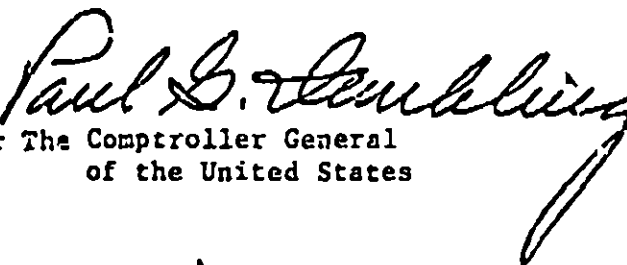Inc., B-186719, September 20, 1976, 76-2 CPD 256.

The one timely ground of Compu-Serv's protest is that another
firm's benchmark results, while found to be acceptable by HEW,
contained missing data similar to that which resulted in Compu-Serv's
benchmark being considered unacceptable. The firm, Tymshare, was
the offeror other than On-Line Systems which passed the benchmark
and submitted a best and final offer.

HEW has responded that during the evaluation of Tymshare's
benchmark data, no data was found to be missing. However, after
the submission of best and final offers and the award to On-Line
Systems, HEW, in preparing for Compu-Serv's debriefing, did dis-
cover that there was one item of information missing from Tymshare's
benchmark. HEW contends the missing information was trivial and
probably caused by operator error, rather than a faulty program,
and not of the same type or number which was missing in Compu-Serv's
benchmark. Therefore, this information was not known by either
party until after the June 22 letter.

HEW states it intended not to allow any firm to have missing data and still be considered acceptable for best and final offers. From the record before our Office, it appears that Tymshare was improperly permitted to submit a best and final offer, but we do not find this failure to discover the one item of missing data in Tymshare's benchmark until after the award to be prejudicial to Compu-Serv. If the missing data had been discovered earlier, it would merely have precluded Tymshare from further discussions, not allowed Compu-Serv to be found acceptable. Moreover, Tymshare was not the successful offeror. Therefore, we find no prejudice to the other offerors or an impropriety in the award to On-Line Systems resulting from this oversight.

Accordingly, the protest is denied.

For The Comptroller General
of the United States